
(1995) 02 RAJ CK 0025

In the Rajasthan High Court

Case No : Income Tax Reference No. 56 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Sardar Stones

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Income Tax Act, 1961 — Section 263, 32

Citation : (1995) 125 CTR 197 : (1995) 215 ITR 350

Hon'ble Judges : Y.R. Meena, J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; None, for the Respondent

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated September 30, 1985, in respect of the assessment year 1982-83, u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the sale price realised included price of stones as well as hire charges of trucks from the customers and thereby holding that the assessee is entitled to depreciation at 40 per cent. and not at 30 per cent. as is allowable in case of motor lorries ?"

2. The brief facts of the case are that the assessee is a trader in stones and owned two trucks which are used for transportation of stones from the site of mines to the depot of the assessee as well as to the customers' premises. The claim of the assessee was that the trucks were occasionally used and when not in use by the assessee hired out to a sister concern. The income from hiring of the trucks in this manner was at a figure of Rs. 33,155. The value of the truck was shown at a figure of Rs. 3,82,280, and the expenditure on the running and maintenance of the trucks was Rs. 1,90,663. The sale of stones during the year was to the tune of Rs. 21,25,660. The assessee claimed depreciation at 40 per cent. on the trucks which was allowed by the Income Tax Officer while assessing

u/s 143(3) of the Act. Subsequently, the Commissioner of Income Tax exercising the powers u/s 263 of the Act came to the conclusion that the rate of depreciation at 40 per cent. is allowable only when the assessee was carrying on the business of trucks running on hire. Since the assessee was not carrying on the business of running the trucks on hire, the depreciation was allowable at 30 per cent. only. The order was, therefore, prejudicial to the Revenue and the assessment order was accordingly set aside with the observation that the trucks were entitled to depreciation at 30 per cent. in accordance with Clause (III)D(9) of the Schedule of depreciation, Appendix-I of the Income Tax Rules, 1962. In appeal before the Commissioner of Income Tax (Appeals), it was contended that the trucks were used in connection with the transportation for sale of stones to the customers. The customers were charged not only for the purchase of stones but also for the transportation and, therefore, such charges are hire charges. It was, therefore, contended that the trucks were not required for transportation of the stones of the assessee and were hired to the sister concern and the income received therefrom has separately been shown. The Commissioner of Income Tax (Appeals) found that in accordance with the language used in (III)E(IA) of the depreciation table which uses the words "used in a business of running them on hire" means that the assessee must not only be giving the trucks on hire but also carrying on a business of running the trucks on hire. The fact which was also taken into consideration by the Commissioner of Income Tax was that this could be at the time only when there must be continuity or regularity on hiring transaction. Casual hiring to a sister concern is not sufficient to justify it that the assessee was carrying on the business of hiring as well, and, therefore, the depreciation at 30 per cent. was directed to be computed.

3. In second appeal before the Income Tax Appellate Tribunal, the Tribunal, following its earlier decision in the case of Manjeet Stone Co., observed that the assessee was using the trucks for transportation for itself and customers and also hired the trucks whenever the trucks were not required for transportation of the stones. The sale price of the stones was charged from the customers which included truck hiring charges as well. The Tribunal further came to the conclusion that the same value was not bifurcated between the sale price of stones and transportation charges and for that reason it does not mean that the trucks were not used on hire by the customers. The order in the case of Manjeet Stone Co. came up for consideration before this court in D. B. Income Tax Reference No. 77 of 1985--decided on November 22, 1990 Commissioner of Income Tax Vs. Manjeet Stone Co., and the following observations were made (at page 186) :

"A plain reading of both these entries, i.e., entry No. III(ii)D(9) and III(ii)E(1A), given in Part I of Appendix I, appended to the Rules, shows that if the. motor buses, motor lorries and motor taxis are used in a business of running them on hire, then those motor vehicles are covered under entry III(ii)E(1A) of Appendix I and are entitled to depreciation at 40 per cent. and the motor buses and motor lorries other than those used in the business of running them on hire are entitled to depreciation at 30 per cent. It is true that the relevant clause does not lay

down the requirement of hiring wholly or exclusively, but the entry has maintained the distinction about the entitlement to depreciation at 40 per cent. and 30 per cent. In the case of motor buses and motor lorries other than those used in a business of running them on hire, they are entitled to depreciation at 30 per cent. while the motor buses, motor lorries and motor taxis used in a business of running them on hire are entitled to depreciation at 40 per cent. If a truck is not used for hiring but for the purpose of one's own business, then it would be entitled to depreciation at 30 per cent. and not 40 per cent. The context of the relevant entry does indicate the same.

In the present case, the business of the assessee is that of mining and sale of stones excavated from the mines and the trucks are used mainly for its business of mining. They are used mainly for carrying the stones from the mine site to the sales depot or to the godown of the assessee. If the trucks are used for its own business, then they are entitled to depreciation at 30 per cent. only, as the assessee was not using the trucks in the business of running them on hire. The registration of the trucks as "public carriers" will not, in any way, affect the eligibility to depreciation as the main consideration as per entry No. III(ii)E(1A) is that the assessee is using the vehicle in the business of running them on hire. The business of the assessee is quarrying and selling the stones after excavation and not of hiring. If a small portion of its income is received from the business of hiring from two or three transactions of hiring, then it will not make the business of the assessee one of hiring the trucks. Even otherwise, when we look at the finding arrived at by the Tribunal regarding the business of the assessee, then we find that the findings are to the effect that the business of the assessee is of quarrying and selling stones and the trucks are mainly used for carrying the stones from the mines to the sales depot. As the trucks were mainly used by the assessee in its own business for carrying the stones from the mine-site to the sales depot, the case of the assessee is covered by entry No. III(ii)D(9) and not by entry No. III(ii)E(1A), and as such the assessee is entitled to depreciation at 30 per cent. and not at 40 per cent. In this view of the matter, we are of the opinion that the Tribunal was not right in holding that the assessee is entitled to depreciation at 40 per cent. and not at 30 per cent. on the trucks and dumpers used by it for its business."

4. The rate of depreciation which is provided in respect of motor lorries other than those in a business of running them on hire is 30 per cent. If the motor buses, motor lorries and motor taxis are used in a business of running them on hire, then the depreciation is allowable at 40 per cent. in accordance with law. The finding which has been recorded by the Tribunal is that there is no specific mention in respect of hire charges of the truck in the bills yet the hire charges should be considered to have been realised. The dispute was not with regard to the hire charges, but was with regard to the nature of business.

5. The Tribunal has observed that the trucks of the assessee are hired by his customers for transportation of their goods and it does not make any difference if

the separate amount of transportation has not been shown in the bill. It is possible that the transportation charges are not shown separately and yet may be realised. This is what happens in a case where the terms of the contract provide that the goods are to be supplied F.O.R destination of buyer and for that purpose the entire responsibility of transportation of the goods to the destination of buyer remains that of the supplier. There may be other contingencies also where the hire charges may not be shown separately in the bill itself. Even charging or showing hire charges separately in the bill would not be the only determinative factor but the Tribunal was required to come to the conclusion as to whether the assessee was carrying on the business of running the vehicles on hire. Charging of hire for the use of the vehicles may be casual as was found in the present case and the main business was of carrying on stones from the mines to the depot of the assessee and also to the destination of the customer. The business of running trucks on hire by transportation stands on a different footing from that of using the truck on hire by a person which is considered different business for which the rate of depreciation has been separately provided. The view this court has taken in the case of Commissioner of Income Tax Vs. Manjeet Stone Co., referred to above that the trucks were mainly used by the assessee for carrying stones from the mine site to the sales depot and, therefore, he should be entitled to depreciation at 30 per cent. is undisputed in the facts of the present case also.

6. In the statement of case, the assessee has been mentioned as a trader of stones using two trucks for transportation of stones from the mine site to the depot of the assessee as well as to the destination of the customers. It has nowhere come on record that the assessee was carrying on the business of running the vehicles on hire. The business of running the vehicles on hire is different from giving the vehicle on hire casually. The vehicle may be given on hire occasionally which may or may not constitute a carrying on of business of running them on hire. It is the main activity and the intention behind it which has to be considered for the purpose of hiring as to whether the assessee is carrying on the business of running the vehicles on hire or not. Even those motor buses, motor lorries, etc., which are not used in the business of running them on hire are entitled to depreciation at 30 per cent. The limit of 40 per cent. depreciation to motor buses, motor lorries and motor taxis is provided because more running is required in the business of running them on hire. In these circumstances, even the Tribunal has not disputed the finding of the Commissioner of Income Tax that the assessee was not engaged in the business of running the vehicles on hire and for that reason and for the reason that the decision which was relied upon by the Tribunal has already been reversed by this court, we are of the view that the Tribunal was not justified in coming to the conclusion that the sale price realised including the price of stones as hire charges from customers, and that is why the assessee is not entitled to depreciation at 40 per cent. and depreciation at 30 per cent. is allowable in the case of motor lorries of the assessee.

7. Accordingly, the reference is answered in favour of the Revenue and against

the assessee. No order as to costs.